

IN THE US DISTRICT COURT FOR THE EASTERN DISTRICT
OF OKLAHOMA

RACHEL AINSWORTH,

Plaintiff,

vs.

UNITED STATES of AMERICA
ex rel. THE DEPARTMENT of
HEALTH and HUMAN SERVICES,
PUBLIC HEALTH SERVICES,
INDIAN HEALTH SERVICES, and
CHOCTAW NATION HEALTH
CARE CENTER, and CHOCTAW
NATION HEALTH SERVICES,

Defendants.

Case No. CIV 11 - 418 - SPS

FILED
NOV 21 2011
WILLIAM B. GUTHRIE
Clerk, U.S. District Court
by Deputy Clerk

PLAINTIFF'S ORIGINAL COMPLAINT

COME NOW the Plaintiff, **RACHEL AINSWORTH**, by and through her attorney, Jeff Belote, and for her cause of action against the Defendants, **UNITED STATES of AMERICA ex rel. THE DEPARTMENT of HEALTH and HUMAN SERVICES ("DHHS"), PUBLIC HEALTH SERVICES ("PHS") INDIAN HEALTH SERVICES, ("IHS") and CHOCTAW NATION HEALTH CARE CENTER ("CNHCC")**, alleges and states the following:

A. PARTIES

1. Plaintiff, Rachel Ainsworth, ("PLAINTIFF") is an individual and resident of Choctaw County, Oklahoma;
2. The Defendant in this action is The Choctaw Nation Health Care Center and is a government agency operating in Latimer County, Oklahoma, at all relevant times.

B. JURISDICTION

3. The court has jurisdiction over the lawsuit under 28 U.S.C. §1346(b)(1) because this is an action for damages resulting from personal injuries and the relief from a medical malpractice tort claim as a result of the negligent acts of government employees, employed by Choctaw Nation Health Care Center, while acting within the scope of their employment.

C. VENUE

4. Venue is proper in this district under 28 U.S.C. §1402(b).

D. CONDITIONS PRECEDENT

5. Plaintiff timely presented this claim in writing to Secretary of the Interior, Ken Salazar, Department of the Interior for The Bureau of Indian Affairs. **This suit is filed within six months after the agency's final written notice of its denial of the claim, which is dated June 15, 2011.**

E. FACTS

6. On May 27, 2008, Plaintiff suffered severe and permanent injuries to her left hand, requiring numerous surgeries and rehabilitation when she was negligently administered Phenergan (Promethazine) intravenously by governmental agency's employees acting in the course and scope of their employment.

F. FEDERAL TORT CLAIMS ACT

7. This act committed by employees of Defendant was negligent. Specifically, various nurses were employees of Defendant and were acting in the course and scope of their employment and had a duty to exercise ordinary care and adhere to applicable standards of care in administering Phenergan (Promethazine) intravenously reasonably and prudently. Under the laws of the State of Oklahoma, a private person or business would be liable to Plaintiff for this act. Under 28 U.S.C. §2674, the United States is liable to Plaintiff for her damages resulting from the negligent administration of Phenergan intravenously, causing personal, permanent and severe injuries described below.

G. DAMAGES

8. As a direct and proximate result of Defendant's negligence, Plaintiff suffered the following injuries and damages:

- a. Physical pain and mental anguish in the past and future.
- b. Lost earnings.
- c. Loss of earning capacity.
- d. Disfigurement in the past and future.
- e. Physical impairment in the past and future.
- f. Medical expenses in the past and future.
- g. Loss of consortium in the past and future.
- h. Loss of household services in the past and future.
- i. Property damage.


H. Prayer

9. For these reasons, Plaintiff asks for judgment against Defendant for the following:

- a. Actual damages in excess of \$75,000.
- b. Costs of suit.
- c. Prejudgment and post-judgment interest.
- d. All other relief the court deems appropriate.

WHEREFORE, Plaintiff prays that she be granted judgment against Defendant in an amount in excess of Seventy-five Thousand Dollars (\$75,000.00) and such other relief as this Honorable Court may deem fair, just, equitable, and appropriate.

RACHEL AINSWORTH,
PLAINTIFF

By: 
Jeff Belote, OBA #12213
LAW OFFICE OF JEFF BELOTE
1308 East Wade Watts Ave., Ste C,
P.O. Box 1910
McAlester, Oklahoma 74502
(918) 423-3344
ATTORNEY FOR PLAINTIFF

ATTORNEYS LIEN CLAIMED